HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4803 OF 2005.

Dattajirao S. Bhosale. ..Petitioner.

Versus.

Shashishekar S. Dhumal. ..Respondent.

Shri. Amit B. Borkar for the Petitioner.

Shri. Uday P. Warunjikar for the respondent.

CORAM: S.B.MHASE, J.

DATE : APRIL 3, 2006.

P.C.

1. Heard counsel for both sides. The order passed below Exhibit 10 in Guardians & Wards Application No.168 of 2004 pending on the file of the 5th Additional District Judge Satara is challenged in this petition. By the said application filed under section 25 of the Guardians and Wards Act, 1890 the respondent is seeking custody of minor daughters from the petitioner, who is maternal grandfather of minors. The petitioner has filed application exhibit-10 stating that under section 9(1) of the Guardians & Wards Act the jurisdiction is with the Kolhapur Court since the minors are ordinarily residing within the jurisdiction of Kolhapur Court. The application is rejected by the impugned order by the 5th Additional

District Judge, Satara. Therefore, the present petition.

2. Both counsel have submitted that the issue of jurisdiction involved in the present matter is a mixed question of fact and law and it has been decided by the 5th Additional District Judge, Satara without recording any evidence. The learned counsel for the petitioner states that under these circumstances the order passed by the 5th Additional District Judge, Satara be set aside and the issue of jurisdiction be kept open for final hearing of the matter to be considered on the basis of the evidence to be led and facts of the case and to be decided after arriving at a finding of fact in this respondent applying the law. Learned counsel for the respondent, Shri. Uday P. Warunjukar has no objection for such a course being adopted.

3. In view of the concessions given by both sides and having agreed with them that the issue of jurisdiction is a mixed question of fact and law, this Court passes the following order.

: O R D E R :

(1) Order dated January 19, 2005 passed by the 5th Additional District Judge at Satara below Exhibit-10 in Guardians and Wards Application No. 168 of 2004 is hereby set aside. The issue on the point of jurisdiction is kept open. It is directed the that the said issue shall be decided along with the main petition on the basis of the evidence produced on behalf of both sides after recording a finding as to what is the ordinary place of residence of the minors involved in the application on applying the provisions of section 9 of the said Act.

(2) Learned counsel for the respondent, Shri. Warunjikar submitted that the petition is pending for a pretty long time and made a request for a direction to the trial court for early disposal of the petition. Shri. Borkar has no objection for such a direction being given. Therefore, 5th Additional District Judge, Satara is hereby directed to dispose of the above mentioned petition filed under the Guardians and Wards Act, 1890 as early as

possible, preferably within a period a period of four months from the date of receipt of copy of this order. Parties are directed to co-operate with the trial court for the expeditious disposal of the matter.

(3) Petition is disposed of in the these terms.

(S.B.MHASE, J.)